

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
Petition of 3G Collect Inc. and 3G Collect)	
LLC for Expedited Declaratory Ruling that)	
TCPA is Inapplicable to the Use of)	
Automated Systems by Operator Service)	
Providers Completing Collect Calls to)	
Telephone Numbers Assigned to Cellular)	
Telephones)	

COMMENTS OF PAY TEL COMMUNICATIONS, INC.

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COMMENTS OF PAY TEL COMMUNICATIONS, INC.

Pay Tel Communications, Inc. (“Pay Tel”), by its attorneys, respectfully submits these comments in response to the Commission’s *Public Notice*¹ seeking comments regarding the Petition for Expedited Declaratory Ruling (“*Petition*”), filed by 3G Collect Inc. and 3G Collect LLC (collectively, “3G Collect”), in the above referenced docket, CG Docket No. 02-278.

Pay Tel supports 3-G Collect’s *Petition*, and urges the Commission to declare that the Telephone Consumer Protection Act of 1991 (“TCPA”)² and the Commission’s rules and regulations implementing it, are inapplicable to the use of automated messages by operator services providers in the course of connecting collect callers to telephone numbers assigned to cellular telephones.

¹ See *Public Notice*, “Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling From 3G Collect” (DA. No. 12-1706). Released on October 23, 2012.

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) *codified at* 47 U.S.C. § 227.

Pay Tel uses automated collect call technology to provide inmate phone service to confinement facilities in North Carolina, Georgia, Virginia, South Carolina, Tennessee, Florida, Washington, Kansas, Missouri, and Ohio. The technology used by Pay Tel is analogous to the technology described by 3G Collect in the *Petition*. Like 3G Collect, Pay Tel provides “operator services” defined by statute as “interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call . . .”³ The operator services provided by Pay Tel do not contravene the prohibitions of the TCPA and its implementing regulations on using automated telephone equipment to “make” or “initiate” calls to telephone numbers assigned to a cellular telephone service.⁴ In fact, as the *Petition* explains, the calling party “initiates” or “makes” the collect call by independently providing the operator services provider with the telephone number to which he or she wishes to be connected. As an operator service provider, Pay Tel merely facilitates the connection between the calling party and the called party.

Pay Tel’s automated call technology serves an important role in allowing individuals in confinement facilities to maintain communication with their friends and families during the term of their confinement. The use of automated call technology ensures that at the onset of each transaction, the called party consistently receives important statutorily required information regarding (1) the identity of the operator service provider, (2) the right to terminate the call at no charge before it is connected, and (3) disclosure of rates or charges upon request.⁵ Importantly, if the called party does not wish to accept the call from the inmate, they can refuse the call

³ Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990) *codified at* 47 U.S.C. § 226(a)(7).

⁴ 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a).

⁵ 47 U.S.C. § 226(b)(1)(A), (B) & (C); 47 C.F.R. § 64.703(a).

without incurring any charges. Conversely, if the called party consents to accepting the call after listening to the automated pre-recorded prompt, Pay Tel has merely provided a billing arrangement by which the call may proceed.

With the rise in wireless telephone use in recent years, many people may only have a telephone number assigned to a cellular telephone by which they can be reached. Under current marketplace conditions, wireless carriers do not provide any feasible options for billing collect calls, so operator services providers like Pay Tel must independently establish billing arrangements with each called party at the time the inmate initiates the first call. Under Pay Tel's current procedures, once the first call is initiated, the called party hears an automated pre-recorded prompt which gives them the option of speaking to the inmate for one minute without charge before they are connected to a live customer service representative for assistance in establishing billing arrangements. If the called party does not set up billing arrangements at the time of the first call and an inmate initiates a subsequent call to the same cellular telephone number, the called party will hear an automated message that "name of inmate" at "name of confinement facility" is attempting to reach them and has the option of pressing a key on their phone to connect to a live customer service representative to establish payment arrangements. This process underscores the fact that the inmate is the actual initiator of the call and ensures that the called party gives prior consent before incurring any charges. Additionally, the use of automated call technology is more cost-efficient, which ultimately can lead to cost savings for collect call recipients who rely on this method of communication to maintain contact with their loved ones in confinement facilities.

The Toll Fraud Prevention Committee of the Alliance for Telecommunications Industry Solutions (ATIS) has long recognized the salutary public benefits of automated calling in the inmate context. In a 1996 White Paper on Prison Originating Toll Fraud, the Committee

recognized that, among other things, the use of an automated operator services platform could prevent operators from being social engineered or verbally abused by inmates placing calls. In this regard, for most inmate calling providers, automated calling platforms are an indispensable component of their business operations.

Operator services providers, such as Pay Tel and 3G Collect must comply with statutory disclosure requirements to ensure that collect call recipients provide consent prior to incurring any charges or to connection of the call. As explained in the *Petition*, the passage of the TCPA and the Commission's implementing rules and regulations did not contemplate a corresponding impact on the processes of operator services providers who merely facilitate a billing arrangement necessary to complete collect calls that have already been "initiated" or "made" by the calling party.

For the reasons discussed herein, Pay Tel supports 3G Collect's *Petition* and respectfully urges the Commission to issue a Declaratory Ruling confirming that the TCPA and the Commission's rules and regulations implementing it are not applicable to the use of pre-recorded messages by operator services providers in the course of connecting collect callers to telephone numbers assigned to cellular telephones.

Respectfully submitted,

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/s/

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